

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

BJ WILSON, )  
 )  
Petitioner, )  
 )  
v. ) No. 4:22-cv-00576-MTS  
 )  
STATE OF MISSOURI, )  
 )  
Defendant. )

**MEMORANDUM AND ORDER**

This closed habeas case is before the Court on petitioner's motion for reconsideration. For the following reasons, plaintiff's motion for reconsideration will be denied without prejudice.

On May 26, 2002, plaintiff filed his petition for writ of habeas corpus under 28 U.S.C. § 2241. Although filed as a petitioner under § 2241, because petitioner is "in custody pursuant to the judgment of a State court," the Court construed his § 2241 petition to be brought pursuant to 28 U.S.C. § 2254. In the Court's memorandum and order dated May 31, 2022, the Court dismissed petitioner's § 2254 petition for failure to exhaust state court remedies. The Court stated, "To satisfy the exhaustion requirement, a person confined in the Missouri State Hospital must apply for release under § 552.040 before filing a petition for a writ of habeas corpus. Additionally, if the application for release is denied, the confined person must appeal to the Missouri Court of Appeals." Doc. [2] (citing *Kolocotronis v. Holcomb*, 925 F.2d 278, 279 (8th Cir. 1991)).

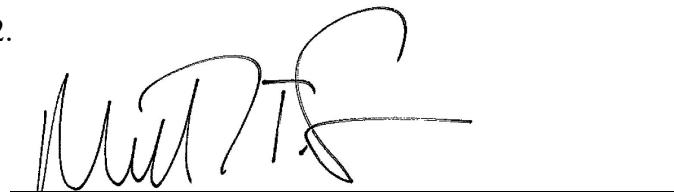
The Court reviewed the state court docket on Missouri Case.net and it did not appear that petitioner had applied for release under Missouri statute § 552.040. For this reason, the Court dismissed petitioner's habeas petition. *Id.*

In his motion to reconsider the Court's dismissal, petitioner states that on July 23, 2021 he filed a motion for conditional release under Missouri statute § 552.040. He states this motion was denied on December 17, 2021. Petitioner attaches to his motion the judgment of the Circuit Court of Barry County, denying petitioner's § 552.040 motion. *See* Doc. [4-1]. To fully exhaust his claims, however, petitioner would have had to appeal this judgment to the Missouri Court of Appeals. Petitioner does not include any evidence that he appealed this judgment to the Missouri Court of Appeals. Without any evidence that petitioner appealed this judgment, the Court still cannot find that petitioner exhausted his state court remedies.<sup>1</sup> For this reason, the Court will deny without prejudice petitioner's motion for reconsideration.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion for reconsideration is **DENIED without prejudice**. Doc. [4].

Dated this 11th day of October, 2022.



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MATTHEW T. SCHELP  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> The Court cannot find any record of (1) the state court order committing petitioner to the custody of the department of mental health or (2) petitioner's motion for conditional release under § 552.040 on the Missouri state court docketing system Missouri Case.net.